



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

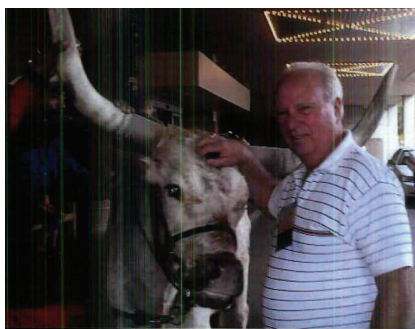
www.dpor.virginia.gov

Winter 2007

Message From the Chair

I just recently returned from an ARELLO meeting in San Antonio, Texas, where I was able to hear concerns and discuss trends regarding real estate regulatory problems all over the world. So, I promise there will be "no bull" in this column.

Virginia has a new agency law, which will take place effective July 1, 2007. The purpose of this law is to require you to define the agency services, which you are proposing to offer to your client. There is a national trend away from the use of "discount brokers," who enter a seller's property in MLS for a fixed fee, and then do nothing more. That business model however, has given rise to an opportunity for the buyer's agent to contract to provide ministerial services for a fee to the unrepresented seller. Just remember, you are not representing them; just doing ministerial duties that a standard agent would do to expedite the closing.



Attention Buyer Agents:

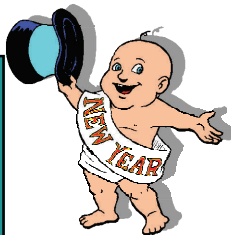
Full disclosure of your services to your principal is getting increasingly important. Just saying to your buyer "you don't have to worry about paying my fee, it will come from the seller," may no longer be adequate. A licensee in Texas was successfully sued after a buyer asked the question, "are there any houses in this subdivision for sale which have an enclosed pool?". The agent replied, "no there aren't." The buyer purchased the house and then found one just like it with an enclosed pool FSBO. In court, the buyer testified that they would have been happy to pay a commission to the agent to negotiate the FSBO, but the agent never gave them that option.

Always tell your buyer exactly what their options are and let them choose, in writing, what they want you to show them and how you will get paid. Today's buyers are much more informed. They know you will not work without compensation. Tell them what it is right up front. It could help you make a sale, as well as help keep you out of court or from coming before the board.

Until next time,
Schaefer



Proposed regulations have been submitted for Executive Branch review. For additional information on the regulatory process, log onto www.townhall.state.va.us.



Virginia Real Estate Board
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Timothy M. Kaine
Governor

Patrick O. Gottschalk
Secretary
Commerce & Trade

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2007 Meeting Dates

All meetings are held on the 4th Floor of DPOR, at the address above.

January 25, 2007
March 22, 2007
May 10, 2007
July 19, 2007
September 20, 2007
November 8, 2007

MEET THE BOARD MEMBERS



Schaefer Oglesby
Chair
Lynchburg
Term ends 6/30/09



Byrl P. Taylor
Vice Chair
White Stone
Term ends 6/30/07



Carol F. Clarke
Charlottesville
Term ends 6/30/08

Miles B. Leon
Norfolk
Term ends 6/30/08



Scott M. Gaeser
Manakin Sabot
Term ends 6/30/10



Marjorie Clark
Citizen Member
Richmond
Term ends 6/30/10

Nathaniel Brown
Citizen Member
Charlottesville
Term ends 6/30/08



Judith Childress
Martinsville
Term ends 6/30/08

Florence Daniels
Alexandria
Term ends 6/30/10



Real Estate Board Responsibilities and Activities

By Florence Daniels, Board Member

The members of the board are appointed by the Governor and serve at the pleasure of the Governor. The board consists of 9 members, 7 licensees and 2 citizen members. The term is for 4 years.

The board's primary goal is to protect the health, safety and well being of the public. We regulate real estate firms, brokers and salespersons. We have the authority to suspend or revoke a license and to levy sanctions if a violation has occurred. We can place a licensee on probation. The board is not focused on levying fines but rather bringing licensees into compliance. The fines go to the State Literary Fund.

- We act as a board. We are not permitted to act or speak for the board without proper authorization.
- We cannot meet privately as a group outside of regular board and committee meetings.
- If someone contacts us regarding a complaint, we cannot discuss the complaint but rather suggest that a complaint is filed.
- We must recuse ourselves from a proceeding if there is a possible conflict of interest, financial gain or if we feel that we cannot be impartial. If a board member has provided technical review during an investigation, participated in a review of a complaint, or presided at a formal hearing, then that member will not participate in the final discussion or decision that the full board renders.

We also administer the Fair Housing and Property Registration programs. Of importance is the Real Estate Recovery Fund that the board regulates. This fund offers financial relief to consumers who have incurred losses because of improper or dishonest actions of any licensed broker or salesperson.

The Board has regular board meetings about 6 times a year. The meetings are open and those who wish to observe the board conducting business are welcome to attend. Board members also conduct informal fact finding hearings (IFF). We are also asked by investigators for input or recommendations on how best to deal with a complaint. We have special training during the year.

Sometimes, we agree to a consent order for minor violations. The complainant usually acknowledges a violation has occurred and agreed to some sanction. If there is a consent order, there is no appeal.

Some licensees cannot comprehend how a licensee can still practice after receiving a sanction or fine by the VREB. Remember that everyone must have due process. If someone is found in violation during a fact-finding hearing and the recommendation is upheld by the full board at the board meeting, that person has a right to appeal. If the licensee appeals, that means that the board's decision is stayed until the appeal process is done.

Besides attending board meetings and hearings, board members are involved in committees that oversee the following:

Education Committee

These members receive volumes of material requesting approval for courses, instructors, and schools. During their committee meeting, they review all the applications, course materials, etc and approve those that fit the board's criteria. The committee has a deadline, so if you do not get your application in by the set date, review will be delayed until the next meeting. All committee recommendations come before the full board for approval.

Newsletter Committee

These members work with a staff liaison to make sure the newsletter is published 4 times a year. The board supports timely publication of this informative literature to assure that all licensees are aware of current VREB activities and decisions. Publishing of the newsletter is funded from interest from the Recovery Fund.

Fair Housing Committee

These members review the findings (the entire file) of fair housing cases where real estate licensees are involved. The committee recommends whether or not to find reasonable cause that discrimination has occurred. This committee can also recommend conciliation of a case. All

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Comments on Property Management

by Schaefer Oglesby, Board Chair

I recently attended the Property Managers Coalition meeting in Williamsburg and had the pleasure of hearing Lem Marshall, Legal Counsel for the Virginia Association of Realtors, speak about property management problems. Highlights from the seminar were:

- The need to have a thorough understanding of the Virginia Residential Landlord Tenant Act (VRLTA). This is a fundamental document, and becomes the basis for your operation, as most properties in Virginia are covered by it in one way or another.
- You must pay interest on tenant deposits.
- You cannot enter into an agreement where you both agree that there will be no interest paid to the tenant. You must comply with the VRLTA.
- Security Deposit Disposition must be done within 45 days.
- Deposit of Security payment must be made within 5 days.

- You absolutely cannot mark up invoices for repairs without specific authority granted to you by the owner in the management agreement.
- If the property is sold, the security deposits transfer to the new owner.
- If the management of the property transfers to another management company, you, as a management agent, have no right to refuse to give all of the information in your files to the owner or the new agent.

Failing to comply with these requirements may subject you to civil suits. You may also have a complaint filed with the Real Estate Board and have to appear for a hearing on these charges, with the possibility of fines being assessed and/or the revocation of your license.

Board Member Committee Assignments

Property Registration:

Marjorie Clark, Chairperson
Miles Leon

Education:

Judith Childress, Chairperson
Byrl Taylor
Scott Gaeser

Regulatory Review/Legislation:

R. Schaefer Oglesby, Chairperson
Carol Clarke

Fair Housing:

Florence Daniels, Chairperson
Marjorie Clark
Carol Clarke

VREB Speaking:

Carol Clarke, Chairperson
Florence Daniels
Byrl Taylor
Judith Childress

Education Reminder

Salespersons completing post license education cannot have their license renewed until they complete all 30 hours. **This requirement applies to active and inactive licenses.**

Salespersons and brokers completing continuing education must complete their education requirements **by the date of expiration. If they do not complete all 16 hours by the date of expiration, they will have to**

retake any course that is more than 2 years old. If they take all 16 hours during the 30-day grace period, we will accept all hours.

Neither salespersons nor brokers can take education courses before their license is issued. **Any course taken before the date the license is issued by the Board will not be counted towards the education requirements for renewal.** Brokers and schools must take this into consideration when signing up new employees for classes.

Real Estate Transaction Recovery Fund

The Virginia Real Estate Transaction Recovery Act provides relief to consumers who have incurred losses through the improper and dishonest conduct of a real estate licensee. Improper and dishonest conduct is defined as the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit. To be eligible to file a claim, the consumer must have been awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against a real estate broker, salesperson or an entity licensed by the Board. Also, the licensee must have been licensed during the period that the improper and dishonest conduct occurred. A single claim against one licensee is limited to \$20,000.00 and may include attorney's fees and court costs.

When a payment involving a licensee is made from the Fund, in most cases, the license is automatically revoked. Any licensee whose license is revoked, shall not be eligible to apply for a license as a real estate broker or salesperson until he has repaid in full, the amount paid from the Fund on his account, plus interest. The Board may also take further disciplinary action against the licensee. All administrative costs and claims are funded with assessments paid by real estate brokers and salespersons licensed by the Board.

When the consumer takes any legal action against a licensee, the Clerk of Court should be notified that the Real Estate Board must also receive a copy of the notice served on the licensee. An affidavit stating the acts of improper or dishonest

conduct of the licensee should be included with the notice given to the Board. After the consumer has obtained a judgment from a court, an attempt **must be made** to collect from the licensee by conducting debtor interrogatories. This action determines whether the licensee has any assets which can be sold or applied in satisfaction of the judgment. If any assets are revealed by the interrogatories, the consumer must provide evidence that all legally available actions have been taken to sell the assets and disclose amounts realized from such actions. A Real Estate Transaction Recovery Act claim form must be filed with the Department of Professional and Occupational Regulation within **twelve (12) months** after the judgment became final. The consumer must attach a certified copy of the judgment order, copies of all pleadings filed by either party (if any), a copy of the contract, a **notarized** affidavit stating the acts of improper or dishonest conduct by the licensee which form the basis of this claim, and evidence of the conducting of debtor interrogatories, which should include the front and back of the summons for interrogatories.

For additional information on filing requirements and eligibility, the Department of Professional and Occupational Regulation has published a brochure on the Virginia Real Estate Transaction Recovery Fund, which is available on the website under the Compliance and Investigations link, at http://www.dpor.virginia.gov/dporweb/reb_rec_brochure.pdf.

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committee recommendations come before the full board for approval.

Legislative Committee

These members work to lobby for certain legislation, which will improve our industry. Of recent successes:

- Applicant for a real estate license must have a high school diploma or the equivalent;
- Amending the agency law which takes effect July 2007;
- Updating the property disclaimer/disclosure regulations and forms; and
- Setting educational requirements for all licensees.

Remember that all recommendations come before the full board for final action. The board can approve, reject or amend the recommendation. Sometimes it is necessary to remand the case for further investigation. Fairness and due process are crucial to assure that licenses can continue to conduct business and earn a living, provided they are in compliance with the VREB rules and regulations.

DISCIPLINARY ACTIONS

The Real Estate Board licenses and/or certifies real estate salespersons, brokers, firms, proprietary schools and prelicense instructors. If a complaint is filed against an individual or business that is subject to the laws and regulations of the Board, the complaint is reviewed to determine if a violation may have occurred and if so, an investigation is initiated. Subsequent to the investigation, the regulant is noticed to appear at an informal fact-finding conference approximately 30 days from the date of the notice; or he may be offered a prehearing consent order. A consent order is an agreement entered by the regulant and the Board, stipulating to violations of specific regulations and/or laws and a sanction. After the informal fact-finding conference is held, a recommendation will be submitted to the Board, for consideration at its next regularly scheduled meeting. Until a determination is made by the Board, the regulant can continue to practice. The Board can take the following actions: assess a monetary penalty; suspend or revoke a license; place an individual on probation; deny renewal; approve or deny a licensure application; or withdraw the approval of any school or instructor. All monetary penalties go to the State Literary Fund.

The public is now able to view copies of the Board's final orders and consent orders on its website www.dpor.virginia.gov. Click on License Lookup. A gray box will appear at the top of the screen with four links. Click on Search Disciplinary Actions Occurring since 4/1/2002. A search page will appear, with directions on how to search. By entering Real Estate Board in the search box, you will get a list of all cases currently in the database.

The following cases are disciplinary actions rendered by the Board in September 2006:

<u>Case No.</u>	<u>Licensee</u>	<u>Violation</u>
2005-04351	Barbara A. Tasker	18 VAC 135-20-210 Disclosure of Interest 54.1-2106.1 Licenses Required Fined \$600 plus \$150 investigation costs
2006-01538	Otis Bannister, Jr.	18 VAC 135-20-180 Maintenance/management escrow accounts 18 VAC 135-20-170 Maintenance of licenses Fined \$1500; license revoked
2006-00705	Amani Ibrihem Hussein	18 VAC 135-20-260 Unworthiness and Incompetence License revoked
2005-03697	Sean E. Bates	18 VAC 135-20-260 Unworthiness and Incompetence 18 VAC 135-20-270 Conflict of interest 18 VAC 135-20-300 Misrepresentation/omission \$350 investigation costs; license revoked
2005-02716	Dorothy S. Childs	18 VAC 135-20-310 Delivery of instruments Fined \$350 plus \$350 investigation costs
2006-03337	Dennis M. Mason	18 VAC 135-20-260 Unworthiness and Incompetence Fined \$250 plus \$150 investigation costs
2006-01825	Maria M. Ramirez	54.1-2132 Licensees engaged by buyers 18 VAC 135-20-310 Delivery of instruments Fined \$3500; Probation; additional ce
2006-00748	Sherry R. Samples	18 VAC 135-20-250 Response to inquiry of the board 18 VAC 135-20-260 Unworthiness and Incompetence Fined \$1500; license revoked

2006-03964	Charlene L. McCabe	18 VAC 135-20-310 Delivery of instruments Fined \$350 plus \$150 investigation costs; additional ce
Brandermill Resort Time-Share		
2006-00605		18 VAC 135-40-110
2006-01021		18 VAC 135-40-420
2006-01720		55-374.E
2006-01890		Cease and desist from selling time-share units until the firm is in
2006-02440		full compliance with the Virginia Time-share Act. (These orders
2006-02443		are not available on the website. To obtain a copy, please
		contact Public Records at 804/367-8583.)

FAIR HOUSING

Pursuant to the Freedom of Information Act (FOIA) policy of the Department of Professional and Occupational Regulation, for Fair Housing case files, only complaint dismissals resulting from the Board's determination that **no reasonable cause exists** to believe that a discriminatory housing practice occurred, shall be disclosed to the public. Upon request and following completion of the Board's investigation, information derived from an investigation and any final investigative report may be made available to only the aggrieved person(s) and the respondent(s). Written conciliation agreements shall be made public **unless** the complainant and the respondent agree in writing that the agreement is to remain confidential and the Board determines that disclosure is not required to further the purposes of the Fair Housing Law. Case names can be obtained from the Board minutes located on the Townhall website.

The Board made a finding of reasonable cause or approved conciliation agreements, for the following cases in September 2006:

<u>Action</u>	<u>Case No.</u>	<u>Case Name</u>
Discrimination based on discriminatory terms and conditions	2006-00395	Jason and Carol Sapp v. Louis Marin
Conciliation Agreement	2005-00450	Corey Ogletree v. Sonia Lownsbury and Eudailey Referral Service
Conciliation Agreement	2005-04941	Bernadette Chamberlin v. Felicitas White, Patricia Waddy and Cafritz Company

Legislation Corner

The Virginia Association of Realtors (VAR) informed the Real Estate Board that the VAR plans to introduce legislation during this year's General Assembly session which will change the continuing education requirements for brokers and new salespersons. The proposal calls for increasing the amount of continuing education for brokers from 16 hours to 24 hours, and to decrease the



amount of time a new salesperson has to complete the 30 hours of post-license education from two years to six months. You will be able to view the proposed legislation once it is introduced by visiting the Legislative Information System website (<http://leg1.state.va.us>). To contact your Delegate or Senator regarding this or any proposed legislation, contact information is available at <http://legis.state.va.us>.

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